



STATE OF DELAWARE
DEPARTMENT OF FINANCE
DIVISION OF REVENUE
CARVEL STATE BUILDING
820 N. FRENCH STREET
WILMINGTON, DELAWARE 19801

DIVISION OF REVENUE

TECHNICAL INFORMATION MEMORANDUM 91-1

JANUARY 21, 1991

SUBJECT: HAZARDOUS SUBSTANCE CLEANUP TAX PROCEDURES

Effective for gross receipts after December 31, 1990, House Bills 708 and 710 imposed a Hazardous Substance Cleanup Tax on the sale of petroleum products. "Petroleum product" means crude oil, or any portion thereof liquid at 70 degrees Fahrenheit, and includes motor fuel, gasohol, other blended fuels, diesel fuel, aviation fuel, jet fuel, heating oil, motor oil and other petroleum based lubricants. As described more specifically below, these bills, in general, imposed an additional tax on wholesale sales of petroleum products and eliminated the gross receipts tax on retail sales of petroleum products provided a wholesale tax was paid on the same unit of the product.

Wholesaler Requirements

The sale of petroleum products is subject to a tax of 0.6% (.006) times total taxable gross receipts. This additional tax is imposed on the wholesaler but the tax may be passed on to the purchaser as a separate line item on the invoice to the purchaser. In addition to this tax, every wholesaler must pay a surtax at the rate of .25% (.0025) of taxable gross receipts received from the sale of petroleum or petroleum products. **This surtax is imposed on the wholesaler and may not be invoiced to the purchaser.** These new taxes are in addition to the existing .4% (.004) tax on wholesale gross receipts.

Retailer Requirements

House Bill 710 also provides for an exclusion from the gross receipts of a retailer, receipts attributable to the sale of petroleum products provided: 1) the retailer purchased the petroleum product from a wholesaler licensed by this state and 2) that such wholesaler has included the sale of the petroleum product in its taxable receipts. The invoice from the wholesaler indicating the amount of tax paid or passed on by the wholesaler or a letter from the wholesaler indicating that the tax was paid but not invoiced, shall be evidence that the wholesaler has included the receipts from the sale of the petroleum products as taxable receipts. If the Hazardous Substance Cleanup Tax has not been paid by the wholesaler, the retailer must pay this tax, .6%, **AND** the existing retailer's tax of .75% (.0075). **These taxes may not be invoiced to the ultimate consumer.**

The Division of Revenue anticipates that all wholesalers will soon be invoicing the petroleum tax on all of their Delaware sales, and, consequently, most retailers will have ample evidence that their petroleum sales are not subject to the gross receipts taxes. To the extent that a retailer makes sales from untaxed petroleum products in inventory as of December 31, 1990 or received deliveries after December 31, 1990 on which the Hazardous Substance Tax was not paid by the wholesaler, the retailer must pay the Hazardous Substance Tax of 0.6% (.006 x taxable receipts) and the Retailer Gross Receipts tax of 0.75% (.0075 x taxable receipts). This requirement will unnecessarily complicate the first month start-up of the new tax changes. Therefore, by this notice and effective **ONLY** for **January 1991** sales, all gas and special fuel retailers are allowed a limited exemption from reporting and paying gross receipts on sales from year end inventory and untaxed deliveries after December 31, 1990. The exemption is limited to the number of gallons in inventory on December 31, 1990 and deliveries after December 31, 1990 on which the tax was not paid. This exemption is further limited to the receipts attributable to the sale of 10,000 gallons of untaxed product not to exceed \$14,000 of gross receipts. The Division will allow retailers to simplify the calculation by assuming an average selling price of \$1.40 per gallon.

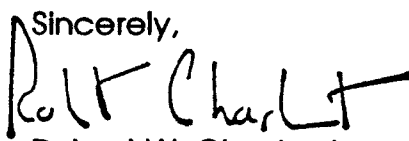
The following is an example of the calculation of taxable receipts for the month of January 1991 to be placed on Line 5 of the Petroleum Products Tax Return:

- Enter total receipts from the sale of petroleum products. \$ _____
- Subtract receipts from the sale of petroleum products on which you were invoiced for the tax or on which the wholesaler has provided evidence that the tax was paid. \$ _____
- Subtract the LESSOR of the number of gallons of product in your inventory as of 12/31/90 + the number of gallons of untaxed product delivered after December 31, 1990 x \$1.40 OR \$14,000 \$ _____
- Taxable Petroleum receipts (but not less than zero) to be entered on Line 5 of your gross receipts tax return. \$ _____

For purposes of January's reporting requirements, all business facilities or entities comprising an enterprise with common ownership or common direction and control shall be treated as one, and shall be allowed a waiver to the extent of 10,000 gallons in the aggregate or \$14,000 whichever is less.

Consumer Sales of Combustible Fuels for Heating or Cooking

House Bill 710, effective for gross receipts received after December 31, 1990, provides for an exclusion from the gross receipts of a wholesaler, receipts attributable to the sale of any form of combustible petroleum product for heating or cooking which is **sold for ultimate consumption and not for resale**. This exemption will generally apply to the sale of home heating oil sold to the ultimate consumer. This exemption does not affect the Hazardous Substance Cleanup Tax which may have been paid by the wholesaler on the purchase of the combustible fuel.

Sincerely,

Robert W. Chastant
Director of Revenue